IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 268 of 2001.

Date of Decision: 17th May, 2006.

Sh. Bhagat Ram **…..Petitioner.**

Versus

Smt. Besru and another **……Respondents.**

Coram

The Hon'ble Mr. Justice Dev Darshan, Sud, Judge..

Whether approved for reporting?[1]

For the Petitioner: Mr. Sunil M. Goel, Advocate.

For the Respondents: Mr. S.S. Mittal, Sr. Advocate, with Mr. Dev Raj, Advocate.

Dev Darshan Sud, Judge.

This Revision Petition has been preferred by the decree holder against the judgment and decree of the learned Senior Sub Judge, Kullu, dismissing the application filed by the decree holder under Order 21 Rule 32 of the Code of Civil Procedure for initiating action in accordance with law against the judgment debtor.

Suit was filed by the decree-holder against the judgment debtors praying for a decree of permanent prohibitory injunction and in the alternative for possession of the suit land as described in the plaint. The

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

suit was decreed by the learned Trial Court on 25.5.1996 in the following terms:

> *" As a sequel to my findings on issues 1 to 4 above, the suit of the plaintiff is decreed for permanent prohibitory injunction and the defendants are restrained from causing any sort of unlawful interference in the ownership and possession of the plaintiff concerning the suit land as described in para-2 of the judgment and from raising any sort of construction thereon as well as from raising the construction of the building in such a manner that the rainy water or any other water of the house of the defendants may fall or enter into the suit land in any manner. However, the parties are left to bear their own costs. Decree-sheet be drawn up accordingly and file after due completion be consigned to the record room."*

It is not disputed before me that the decree has attained finality. An application was moved by the decree holder before the learned Executing Court with a prayer that the judgment debtors be detained in civil prison and their immoveable property be attached as they have violated and disobeyed the judgment and decree. The decree holder had detailed a number of grounds which, according to him constituted such acts which would entitle him to the relief provided under Order 21 Rule 32 of the Code of Civil Procedure.

The petition was resisted on a number of grounds by the judgment debtors. They pleaded that there is no disobedience of the decree. Both the parties led evidence in the matter in support of their respective contentions. During the pendency of the petition, an application under Order 26 Rules 9 and 10 of the Code of Civil Procedure was filed before

the Executing Court by the judgment debtors praying that a Local Commissioner be appointed to ascertain as to whether the decree holders allegation that the judgment debtors had disobeyed the judgment and decree be ascertained by verifying the facts on the spot. It was alleged that offending construction regarding which complaint had been made, was in the land owned by the judgment debtors and was not a part of the suit land which was subject matter of the injunction and this fact could be ascertained by the Local Commissioner The learned Executing Court, appointed Naib Tehsildar as a Local Commissioner for demarcating the land in khasra No. 4681 and 4682 and to submit his report to the court. Demarcation was carried out and detailed objections were filed by the decree holders against the demarcation urging various illegalities which had been committed by the Local Commissioner. On 18.5.2001, the matter was taken up by the learned Executing Court, and after consideration of the report, the application was dismissed. For reaching this conclusion, the learned Executing Court has observed that from a close scrutiny of the record of the case and the report, it was clear that the Local Commissioner had submitted a comprehensive report which ought to be accepted.

The record shows that on 15.5.1997 two issues were framed by the learned Executing Court. Instead of deciding the application under Order 21 Rule 32 of the Code of Civil Procedure, by considering all the material on record including the objections, the learned Executing Court has adopted a short cut and proceeded to dismiss the application only on the basis of the report of the Local Commissioner. This course of action was

not open to the learned Trial Court. It is by now well settled that the report of the Local Commissioner cannot per se constitute substantive evidence. The objections which had been raised had to be considered and decided by the learned Executing Court on the basis of the evidence which could be led by the parties after an opportunity had been granted to them. It could not merely, on its own come to the conclusion as to whether the report was correct or not. For this purpose, the learned Executing Court could not don mantel of a witness supporting the report of the Local Commissioner. The decision as to whether the report was right or wrong had to be taken on the basis of the evidence led by the parties. Learned Executing Court should be aware about the fact that a judgment and decree is meant to be obeyed and cannot be allowed to be violated by any party to the suit or those of the parties who are bound by it.

I do not find from the record that any exercise has been undertaken by the learned Executing Court to ascertain the correctness of the report or to assess the violation of the decree and other evidence which has been placed on the record. In the circumstances, this Revision Petition is allowed and the matter is remanded to the learned Executing Court for decision afresh in accordance with law. Parties to this petition shall be granted an opportunity to lead evidence in support of their respective contentions. Parties to appear before the learled Trial Court on **29th June, 2007.** Needless to say that the application was filed in the year 1996, it shall be disposed of as expeditiously as possible and in any event not later than 31st December, 2007.

(Dev Darshan Sud)
Judge

17th May, 2007.(cm)